IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

Bail Appl..No. 5981 of 2007(K)

LP.19/2006 of J.M.F.C.-III,KOZHIKODE
CRIME NO.143/04 OF PANNIYANKARA POLICE STATION.

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: PETITIONER/ACCUSED

K.V.JITHESH, AGED 30 YEARS,
S/O. VIJAYAN, VIJISHA NIVAS, KOOTHUPARAMBA,
KOTTAYAM AMSOM DESOM, THALASSERY TALUK.

BY ADV. SRI.A.K.ABDUL AZEEZ

RESPONDENTS: STATE AND COMPLAINANT

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1. STATE OF KERALA, REP. BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
PANNIYANKARA POLICE STATION, KOZHIKODE DISTRICT.

BY P.P. SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO. 5981 OF 2007

Dated this the 3rd day of October, 2007

ORDER

Application for anticipatory bail. The petitioner faces indictment in a prosecution for offences punishable, inter alia, under Secs.294(b) and 323 of the IPC. Cognizance has been taken. The petitioner has not appeared before the learned Magistrate. Coercive processes have been issued by the learned Magistrate against the petitioner reckoning him as an absconding accused. The petitioners finds a warrant of arrest issued by the learned Magistrate chasing him.

2. According to the petitioner, he is absolutely innocent. His absence was not wilful or deliberate. He was not served with any notice from the court. The petitioner, in these circumstances, wants to surrender before the learned Magistrate and seek regular bail. The petitioner apprehends

that his application for regular bail may not be considered by the learned Magistrate on merits in accordance with law and expeditiously. In these circumstances, the learned counsel for the petitioner prays that appropriate directions under Sec.438 and/or Sec.482 of the Cr.P.C. may be issued in favour of the petitioner.

3. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general

directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

5. In the result, this application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

6. Hand over a copy of this order to the learned counsel for the petitioner.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge